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Attorneys for Plaintiff and others similarly situated

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CINNAMON MILLS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

TARGET CORPORATION, a Minnesota
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: 5:20-CV-01460-JGB-KK
[Assigned to Hon. Jesus G. Bernal]

**DECLARATION OF BRIAN J.
MANKIN, ESQ., IN SUPPORT OF
MOTION FOR FINAL APPROVAL
OF SETTLEMENT AND MOTION
FOR AN AWARD OF ATTORNEYS'
FEES, COSTS AND A SERVICE
AWARD**

Hearing

Date: April 22, 2024
(requested to be cont.
to 7/2/24)
Time: 9:00 a.m.
Courtroom: 1

Complaint filed: June 10, 2020

1 I, Brian J. Mankin, state and declare:

2 1. I am an attorney licensed to practice before all of the courts of the State of
3 California. I am a partner and manage the employment law department with the law firm
4 of Lauby Mankin & Lauby LLP, which has offices in Orange County and Riverside
5 County. I am thoroughly familiar with and have personal knowledge of all of the facts
6 set forth herein. I submit this declaration in support of Plaintiff's Motion for Final
7 Approval of Class Action Settlement and for an Award of Attorneys' Fees, Costs and a
8 Service Award. If called as a witness, I could and would competently testify thereto.

9 **Qualification of Counsel**

10 2. I have been a member, in good standing, of the State Bar of California since
11 2001. I am admitted to practice in the United States District Courts for the Central and
12 Southern District of California and the Ninth Circuit Court of Appeal and have tried cases
13 in various courts in California.

14 3. I have handled well over 500 employee vs. employer litigation matters
15 during my 23 years in practice. Over the last 15 years, my practice has almost entirely
16 consisted of representing employees, the majority of which has included class action and
17 representative action wage and hour matters. In total, I have handled well over 250 class
18 action and representative action wage/hour cases, and have been appointed by the court
19 as class counsel and have received final court approval and judgment in over half of those
20 actions to date, and anticipate receiving final approval in many more of those in the
21 future.

22 4. As part of these settlements and judgments, I have recovered in excess of
23 \$250 million in damages for my clients and the class members (who often work as
24 nurses, ambulance drivers, technicians, warehouse workers, truck drivers, sales,
25 professional occupations and countless other trades). My team and I once held the record
26 for the largest known PAGA-only case in California's history - a \$12.5 million-dollar
27 court approved settlement, which followed extensive litigation, summary adjudication
28 and writs to the CA Supreme Court against a Fortune 50 company (*Garcia v. Macy's*,

1 Los Angeles Superior Court).

2 5. I have tried two major class and PAGA cases against Fortune 100
3 companies. In 2018, I was lead counsel in a PAGA case that my firm tried in the Orange
4 County Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a
5 class action case against Walmart in District Court, wherein the jury awarded Plaintiffs
6 and the class over \$6 million. Both cases were appealed.

7 6. I was named by the LA Times as one “Southern California Leading
8 Lawyers” in the May 2023 issue of Consumer Attorney’s of Southern California (a
9 recognition given to 17 employment/labor law attorneys in 2023). Additionally, over the
10 last five consecutive years, I have been selected by my peers as a “Super Lawyer” in
11 Employment Litigation, a distinction that only 5% of lawyers receive.

12 **Adequacy of the Settlement**

13 7. The rulings from this Court and the Ninth Circuit firmly decided all legal
14 issues, thereby upholding Plaintiff’s legal theory on the vacation claim under
15 Section 227.3, and ruling in favor of Target on the waiting time penalties claims under
16 Section 203. (S.A. § II.H). Thereafter, the Parties agreed to a settlement that pays every
17 Class Member the full amount owed under the Labor Code § 227.3 unpaid vacation wage
18 claim. Since this Court and the Ninth Circuit rejected Plaintiff’s claims for statutory
19 penalties, Plaintiff recovered the maximum possible amount for Class Members. And, in
20 many cases, the Class Members will receive more than they are owed due to the \$5
21 minimum payment guarantee. Thus, the “fairness and adequacy” analysis is simple since
22 there was no compromise on the value of the Class claims – Plaintiff’s counsel negotiated
23 for and obtained every cent owed to the Class and more.

24 8. Plaintiff also sought PAGA penalties for each violation of Labor Code §
25 227.3, which occurred each time a PAGA Group Member was terminated with Unpaid
26 Vested Vacation Wages owed. Although PAGA penalties (in the default amount of \$100
27 per pay period) could have yielded a maximum potential PAGA penalty of \$975,900
28 under Cal. Lab. Code. § 2699(f)(2), this maximum figure fails to account for several

factors that impact valuation of PAGA claims. For instance, the maximum figure fails to acknowledge that the Court and the Ninth Circuit found that Target did not act willfully, and that this was an issue of first impression. Moreover, courts have wide latitude to reduce the amount of civil penalties “based on the facts and circumstances of a particular case” and if “to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Labor Code § 2699(h); *Cotter v. Lyft, Inc.*, 193 F.Supp.3d 1030, 1037 (N.D. Cal. 2016) (noting in the context of approving settlement that a reduction in PAGA penalties would be “appropriate” based on the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer did not “deliberately evad[e] a clear obligation to provide legally required pay and benefits to employees,” (ii) the employer did not “negligently fail to learn about its obligations under the wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because “there is no straight answer to the question.”). This reasoning is directly applicable here, as Target would argue at trial that imposing *any* PAGA penalties would be unjust given the uncertainty and contradictory case law regarding the proper rate at which to pay vested vacation. For this reason, the Parties negotiated the value of the PAGA claims and agreed on a PAGA settlement of \$48,880, which is equal to 5% of the maximum amount.

9. The Settlement Agreement provides that Target will pay the Gross Settlement Amount (“GSA”) of \$945,456 to fund the following:

- a. Target will pay every Class Member the *full Unpaid Vested Vacation Wages owed* (and, in many cases, more than owed due to a \$5 minimum payment).
- b. Target will pay a fair and reasonable PAGA amount of \$48,800 to settle Plaintiff’s PAGA claim, allocated 75% to the California Labor Workforce Development Agency (“LWDA”) and 25% to all PAGA Group Members in an equal share.
- c. Target will pay Class Counsel’s *actual* attorney’s fees (*i.e.*, lodestar) through final approval of \$503,750 (but from this amount, Class Counsel

has agreed to reduce their attorneys' fee request by \$14,356.52 to fund the \$5.00 Minimum Payment to the Class Members) along with Class Counsel's costs of \$20,950 (which is less than costs actually incurred).

d. Target will pay a Service Award to Plaintiff of \$10,000 and will pay Settlement Administrator Expenses of \$47,000:

10. The process of mailing the Notice Packets was very successful, as only 1.3% of the Notice Packets were deemed undeliverable by the Settlement Administrator. This means that 98.7% of the Class Notices were successfully delivered.

11. The response from the Class Members was overwhelmingly positive, as no Class Member objected to the settlement and only one opted-out, resulting in a 99.99% participation rate.

12. As discussed at length in Plaintiff's motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is favorable to the Class as it pays them for the full value of their unpaid vacation wages owed. And considering that this case settled on the verge of trial following discovery, class certification, motions for summary judgment and an appeal, it is clear that Parties performed the necessary work and made informed decisions when negotiating the Settlement.

13. I believe that the Settlement is fair, reasonable and adequate, and in the best interests of the Class, given there was no compromise on the value of the Class claims – Plaintiff's counsel negotiated for and obtained every cent owed to the Class and more. Indeed, this was a very good result for the Class.

Adequacy of Counsel and Reasonableness of the Requested Fee and Cost Awards

14. As set forth above, I have handled over 250 class and representative actions, have been appointed as class counsel and have successfully resolved about half of those class actions, and many others remain pending and will successfully resolve in the future while recovering many, many dozens of millions of dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, *An Empirical Analysis of Class Actions*, cited in *Laguna v. Coverall North*

America, Inc., No. 12-55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

15. When this case was taken on a contingency fee basis, with my co-counsel's firm and mine agreeing to assume responsibility for all litigation costs, the ultimate result was far from certain. In the course of this litigation, Class Counsel paid all costs including filing fees, court costs, research fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

16. In the wake of the Ninth Circuit decision, which confirmed Target's liability on the unpaid vacation claim, the Parties began settlement negotiations. As part of this process, Target provided Class Counsel with data regarding the total amount of Unpaid Vested Vacation Wages owed to the Class Members. Thereafter, in April 2023, Class Counsel provided its total lodestar and costs to Target which was estimated through the conclusion of the case (\$503,750 in fees and \$20,950 in costs), and summarized in the following chart (based on projections from April 2023):

Attorney/Timekeeper	Years of Experience	Rate	Hours	Fee
Brian J. Mankin (Partner – LML)	23	\$775	130	\$100,750
Peter Carlson (Senior Assoc. – LML)	10	\$575	344.4	\$198,030
Gupta Wessler (Various Attys) Appellate Counsel	See Gupta Decl.	See Decl.	290	\$205,000
TOTALS			764.4	\$503,750

17. Target agreed to fund these amounts as part of the Settlement. However, as negotiations were still ongoing, it was discovered that some Class Members were owed less than \$1 in Unpaid Vested Vacation Wages (*i.e.*, some individuals only had one hour of accrued and unused vacation at the time of termination and were only owed a small

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 underpayment on that one hour). To account for these instances, we proposed applying a
2 “Minimum Payment” of \$5 for all Class Members, but Target would not agree to fund the
3 Minimum Payment. Thus, we agreed to pay for the total cost of the Minimum Payment
4 out of its fees, which amounts to a total reduction of \$14,356.52 to fund the Minimum
5 Payment, bringing Class Counsel’s actual fee request down to \$489,393.48 (\$503,750
6 minus the \$14,356.52 Minimum Payment). Also, although Class Counsel’s costs are now
7 several thousand dollars higher, Class Counsel is seeking the agreed upon cost
8 reimbursement of \$20,950.

9 18. There are several additional factors why I believe that the Court should
10 award this as reasonable attorneys’ fees. First, Class Counsel obtained an excellent result
11 for the Class after prevailing on an issue of first impression, resulting not only in a
12 statewide change in practice for Target’s employees, but this is a result that will benefit
13 tens of thousands of workers across California by ensuring that final vacation pay is paid
14 at their final rate of pay, rather than a lower employer established rate of pay.

15 19. Second, while a typical common fund settlement will result in fees being
16 paid from the Class share, here Target agreed to pay the Class in full, and separately fund
17 the fee and cost request. This ensures that the Class will receive full payment of the
18 wages owed. Plus, when factoring the Minimum Payment that Class Counsel agreed to
19 pay, the result is better than the best case result that could have been achieved for the
20 Class at trial (and of course, it saves all parties and the court an enormous amount of
21 time, expense and inconvenience).

22 20. Third, Class Counsel are experienced class action litigators. From the very
23 start of this case, Class Counsel have diligently litigated and positioned the case for
24 success. Knowing that it was likely in for a battle that challenged the statewide practice
25 of a Fortune 50 Company, Plaintiff retained skilled litigation counsel, as well as skilled
26 outside appellate counsel, and prepared for the long haul. After initial written discovery,
27 the deposition of Plaintiff and the 30(b)(6) deposition of Target, the Parties teed up the
28 legal issues before this Court. Class Counsel prevailed on its primary claim of unpaid

1 vacation wages, and this Court granted class certification. This prompted Target to
2 challenge the ruling before the Ninth Circuit. But the rulings from the Ninth Circuit
3 mirrored this Court's rulings, whereby Class Counsel established liability. In lieu of a
4 trial to determine damages, the Parties reached a settlement that is essentially equivalent
5 to a trial decision. The Class will receive full payment of its unpaid vacation wages, and
6 Target will separately pay everything else, including attorneys' fees and costs on the core
7 issue of vacation pay while only losing on a derivative penalty claim

8 21. Fourth, this case involved a nuanced issue of first impression, which is never
9 an easy case to prosecute, and here Plaintiff did so against a Fortune 50 Company and
10 top-notch defense counsel. Indeed, the issues were complex and forced the Parties to
11 debate everything from the meaning of terms in Webster's Dictionary, to decades-old
12 opinion letters from the Department of Industrial Relations, to voluminous case law.
13 Class Counsel did not cherry-pick an easy case. Far from it.

14 22. Class Counsel have been representing Plaintiff and the putative class in this
15 matter strictly on a contingency fee basis, and as such, had to forego other financial
16 opportunities to litigate other cases. To that end, we have incurred the risk of non-
17 recovery after investing a substantial amount of time, money, and resources, and have
18 done so since the inception of this case without any payment or compensation. This risk
19 of losing after performing substantial work against a multi-billion-dollar corporation
20 cannot be understated here. Target retained highly competent counsel – not only a
21 Partner within Paul Hastings, but the chair of the firm's Employment Law Practice - to
22 defend it, which amplified the risk that Target could prevail on the merits. And while
23 defense counsel received compensation for the hours they expended (probably valued far
24 higher than Class Counsel's lodestar), Class Counsel did not have such a luxury. If
25 Target won on the merits, Class Counsel would have recovered nothing. This is not an
26 easy burden for a small firm.

27 23. The litigation portion of this case was primarily handled by Peter Carlson
28 while I performed the role of supervising attorney. Additionally, all appellate work was

1 performed by our co-counsel, Mr. Gupta, to whom we have a joint prosecution agreement
2 whereby Mr. Gupta's office will receive 60% of the fee award and my office will receive
3 40% since this matter went to the Ninth Circuit. The fee split was approved by Plaintiff.

4 24. Mr. Carlson is a senior associate in my firm and he has been in practice for
5 10 years. As set forth in his declaration, he bills at the hourly rate of \$650/hour. I have
6 been in practice for 23 years, with most of those years handling complex litigation and
7 over the last 15 years, my practice has almost entirely consisted of handling class action
8 wage and hour matters. My billing rate is \$775/hour.

9 25. The request fee award should be approved because Class Counsel's fees are
10 based on hourly rates comparable to those of other attorneys with equal or similar
11 experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com
12 indicates that the benchmark rates are: \$777/hour for an 8–10-year attorney, \$878/hour
13 for a 11–19-year attorney, and \$1,057/hour for a 20+ year attorney). Moreover, the
14 Wolters Kluwer 2023 Real Rate Report ("Real Rate Report") provides directly applicable
15 information in this regard. The Real Rate Report is based on an enormous and
16 statistically significant compilation of data, comprising millions of billing entries from a
17 hundred thousand individual timekeepers who worked at thousands of law firms. The
18 Real Rate Report then compiles and analyzes this data to provide the hourly rates for
19 partners and associates in major metropolitan areas. For the southern California area: (a)
20 the rate for partners in Los Angeles is between \$840 and \$1,159 per hour for the middle
21 and upper quartiles, and (b) the rates for associates with seven or more years of
22 experience, the median rate is \$674 per hour, and the upper quartile rate is \$888 per hour.
23 And, perhaps most importantly, the information provided in the Real Rate Report is not
24 based on self-reported numbers, surveys, sampling, or reviews or other publications –
25 instead, the Real Rate Report is based on the actual hours and fees billed by law firms,
26 which makes it "a much better reflection of true market rates than self-reported rates in
27 all practice areas." *Brown v. CVS Pharmacy, Inc.* 2017 U.S. Dist. LEXIS 182309, at *21
28 (C.D. Cal. Apr. 24, 2017); *PLCM Group, Inc. v. Drexler*, 22 Cal.4th 1084, 1085 (2000)

1 (holding that rates should be premised upon precisely this form of independent,
2 “objective” rate data that reflects “fair market” rates actually billed to clients “in the
3 community for similar work.

4 26. As shown in the chart above, in April 2023, Class Counsel estimated that we
5 could incur approximately \$503,750 through the conclusion of the case (before deducting
6 the Minimum Payment). Fast forward one year later to the present, and the estimated
7 future hours that were provided in April 2023 were a bit low. For instance, I primarily
8 handled the case throughout the settlement and approval process, and in April 2023 I
9 projected 55 future hours for these tasks. But as it turned out, it took 4 months, countless
10 emails/calls/revisions to finalize the terms of Settlement Agreement and its multiple
11 exhibits, resulting in my hours being close to 100 hours light from my projection one year
12 ago. Likewise, Mr. Carlson shows 407.6 hours through the present, so he underestimated
13 by about 60 hours (see paragraph 8 of his declaration), and Mr. Gupta was a few hours
14 light. But hindsight is 20/20, and we agreed to cap our fees at \$503,750. After deducting
15 \$14,356.52 for the Minimum Payment, Class Counsel’s actual fee request is \$489,393.48.

16 27. The fee is fair, reasonable and warranted because of the results achieved for
17 the Class Members, both in terms of the immediate cash settlement, as well as the fact
18 that the Class Members resoundingly supported the Settlement and will receive 100 cents
19 on the dollar for the unpaid vacation claim. Target does not oppose this fee request.

20 28. In the course of prosecuting this action, Class Counsel have incurred
21 expenses that were incidental and necessary to the effective representation of the Class.
22 As part of the Settlement Agreement, the Parties agreed that Target would pay \$20,950 in
23 litigation costs based on the estimated costs that Class Counsel provided in April 2023.
24 In actuality, through final approval, my office will have incurred an estimated \$22,330.54
25 in litigation costs (see **Exhibit A** attached hereto). Including my co-counsel’s costs of
26 \$1,329.90 (see Gupta Decl. ¶ 9), our actual combined costs are \$23,660.44. However,
27 Class Counsel are capping the request at \$20,950 in accordance with the Settlement
28 Agreement and Class Notice. Target does not oppose this request for costs.

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30. Indeed, Plaintiff's participation was an essential element of the analysis that allowed Class Counsel to prevail on its theory, establish new law and ultimately settle the case. Of course, Plaintiff also took on various risks, including the risk that she could have been ordered to pay Target's costs if she lost and the risk of retaliation and being blackballed in the industry. Target does not oppose the requested service award.

31. Both Motions and the supporting declarations have concurrently been submitted to the LWDA. (*See Exhibit B*).

32. Attached hereto as Exhibit “A” is a true and correct copy of an itemized statement of my firm’s litigation costs.

34. For the foregoing reasons, it is respectfully requested that the Court approve Settlement and the requested award of attorneys' fees, costs and a service award.

/s/ Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

EXHIBIT “B”